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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------|-------------|----------------------|---------------------|------------------|
| 09/980,727 | 07/08/2002 | Hubert Rein | 228.1010 | 8812 |
| 20583 | 7590 | 01/11/2006 | EXAMINER | |
| JONES DAY | | | OH, SIMON J | |
| 222 EAST 41ST ST | | | ART UNIT | PAPER NUMBER |
| NEW YORK, NY 10017 | | | 1618 | |

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|------------------------------|------------------------|---------------------|--|
| | 09/980,727 | REIN ET AL. | |
| | Examiner | Art Unit | |
| | Simon J. Oh | 1618 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04 October 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,4-6,10,16-18 and 20-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,4-6,10,16-18 and 20-32 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____ .

DETAILED ACTION

Papers Received

Receipt is acknowledged of the applicant's amendment, response, and petition for extension of time, all received on 04 October 2005. Receipt is acknowledged of the applicant's information disclosure statement, received on 06 April 2005.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 2 and 3 under 35 U.S.C. 103(a) as being unpatentable over Lentz *et al.* is rendered moot with the cancellation of those claims.

The rejection of Claims 1, 4-6, 10, 16-18, and 20-32 under 35 U.S.C. 103(a) as being unpatentable over Lentz *et al.* is maintained.

Response to Arguments

Applicant's arguments filed 04 October 2005 have been fully considered but they are not persuasive.

The examiner does not interpret the prior art as being solely limited to what has been disclosed in the examples of the Lentz *et al.* reference. The examiner must take the broadest reasonable interpretation of both the claims and the prior art. It is the position of the examiner that one of ordinary skill in the art, giving both the prior art and the claims in their present form

their broadest reasonable interpretation, would find the claimed invention obvious in view of the prior art. See MPEP § 2111 and 2123. The examiner must also consider what has been taught by the prior art apart from what is only disclosed in given examples. Given the overlapping ranges of the process temperatures of the prior art and the instant application, it is the position of the examiner that such same temperatures must lead to the same result of vitrified starch products. The prior art clearly discloses a first and second level of destructurezation that remains below the glass transition temperature (See Page 12). Furthermore, preferred embodiments are not a teaching away from a broader disclosure. Thus, it is the position of the examiner that the applicant's response is based on a narrow interpretation of the prior art. One of ordinary skill in the art, giving both the prior art and the claims in their present form their broadest reasonable interpretation, would find the claimed invention obvious in view of the prior art. See MPEP § 2111 and 2123. As such, all pending claims are presently rejected.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Simon J. Oh
Examiner
Art Unit 1618

sjo



MICHAEL HARTLEY
PRIMARY EXAMINER